

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
APRIL 10, 2013**

**CALL TO  
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Greg Stevens, Noah Bodman, Jim Heim, Jeff Larsen, Bob Faulkner and Ron Schlegel. Gene Shellerud was absent. BJ Grieve and Erik Mack represented the Flathead County Planning & Zoning Office.

There were 31 people in the audience.

**APPROVAL OF  
MINUTES**

Heim made a motion, seconded by Larsen to approve the February 13, 2013 meeting minutes as corrected.

On a roll call vote the motion passed unanimously.

**PUBLIC  
COMMENT  
(not related to  
agenda items)**

Olaf Ervin was present with Troup 1918 of the Boy Scouts to watch how the public process worked as part of their merit badge in communications and citizenship. They thought the meeting would be a good example of the process.

**FRTA 13-01**

An amendment to the Flathead County Floodplain and Floodway Management Regulations to add an appendix that lists the most recently adopted Flathead County Flood Insurance Study (FIS) and Flathead County Flood Insurance Rate Maps (FIRMs) and specifies the effective dates. The proposed amendment also includes changes to the text of Sections 1.03, 1.04 and the definition of "Official Floodplain Maps" in Chapter 8 to eliminate redundant language and add references to the new appendix. If approved by the Commission, the amendment will incorporate and adopt the FIS and FIRMs recently revised by the Federal Emergency Management Agency (FEMA) as a result of a Physical Map Revision (PMR) process in the Evergreen area. The map panels affected are 30029C1420H, 1810H and 1830H. Per FEMA's Letter of Final Determination to the Flathead County Commissioners dated December 18, 2012, as a condition of continued participation in the National Flood Insurance Program (NFIP) Flathead County must adopt the revised FIS and FIRMs by June 18, 2013. The effective date of the revised FIS and the three affected FIRM panels referenced herein will be June 18, 2013.

<b>STAFF REPORT</b>	Grieve reviewed FRTA 13-01 for the Board.
<b>BOARD QUESTIONS</b>	None.
<b>AGENCY COMMENTS</b>	None.
<b>PUBLIC COMMENT</b>	<u>Richard Burningham</u> , 202 Park Drive, was against the application.
<b>BOARD DISCUSSION</b>	Hickey-AuClaire explained the process the file would follow since it was different from what the board generally reviewed.
<b>MAIN MOTION TO RECOMMEND APPROVAL OF (FRTA-13-01)</b>	Heim made a motion seconded by Larsen to recommend approval of FRTA 13-01 to the Board of County Commissioners.
<b>BOARD DISCUSSION</b>	<p>The board, Burningham, Grieve and Marc Pitman discussed at length the possible routes water may take in the event of a flood, why certain parcels were affected, where the floodwaters covered in 1964 and in the 1970's, the details of the map of affected parcels, the exclusion of the '64 flood from the data used for the map, the chances of flooding, what compelled the remapping of the Evergreen area, how testimony presented at previous meetings with the public and FEMA was handled and alterations to the topography of Evergreen since 1964.</p> <p>The board and Grieve also discussed what happened when the maps are adopted and how loans were affected.</p> <p>The board, Trina Sanford from National Flood Services and Lisa Bartholomew from Smart Insurance Solutions, discussed how flood insurance worked, how the changes in the maps affected property owners in the affected areas and what the options were for property owners.</p> <p>Grieve, Burningham, Sanford and Bartholomew discussed letters which had been sent to affected property owners concerning the change in floodplain designation, when a letter would be sent concerning the need to purchase flood insurance and what the options for property owners were.</p>

Bodman and Grieve discussed if there were permits needed for people who would be in the 100 year floodplain after the maps were adopted to bring in fill on their property.

Larsen, Grieve, Heim, Sanford and Bartholomew discussed the consequences for either adopting or not adopting the maps; which included a possible reduction of disaster relief if an event were to happen and not being able to get a loan from federally insured banks. They also discussed options for flood insurance, the costs, grandfathering of the property, how rates were determined and floodplain permits required for people in the floodplain area.

Hickey-AuClaire recognized Mike Owens as having his hand raised and let him know a member of the board needed to recognize him before he could speak.

Larsen recognized Owen.

Owen asked if people could go into the flood insurance office and ask questions personally or if he needed to go through his insurance agent. He needed to go through his insurance agent.

Hickey-AuClaire offered suggestions to Burningham concerning a LOMA on his property.

Stevens said he would have to vote for the application. Someone would get hurt either way if the FIRM maps were adopted or weren't adopted and he hadn't heard anything that would indicate the data was incorrect.

Schlegel said it was a sad day for Evergreen and Montana when the government was shoving things down the people's throat.

**ROLL CALL TO  
RECOMMEND  
APPROVAL OF  
(FRTA-13-01)**

On a roll call vote the motion passed 6-1 with Schlegel dissenting.

**BOARD  
DISCUSSION**

Hickey-AuClaire said there would not be another hearing at the Commissioners' level. It would be on their agenda as an item.

Grieve thanked the flood insurance representatives for being present to answer questions.

**PENNEY-  
TILLOTSON  
(FZC 13-01)**

A Zone Change request in the Highway 93 North Zoning Districts by Gerald Penney, Bartley & Ardith Tillotson, Barbara Penney and Thomas Penney. The proposal would change the zoning on 40.114 acres from SAG-10 (Suburban Agricultural) to R-2.5 (Rural Residential). The properties are located at 1100, 1130, 1150 and 1170 Hodgson Road.

**STAFF REPORT**

Mack reviewed Staff Report FZC 13-01 for the Board.

**BOARD  
QUESTIONS**

Larsen, Grieve and Mack discussed a court case which stated everything was residential up to AG-20 and whether or not that determination was only in the West Valley area.

Hickey-AuClaire, Gerald Penney and Mack discussed when and how the property was originally split.

**APPLICANT  
PRESENTATION**

Eric Mulcahy, Sands Surveying, gave the history of the property and why the application was before the board now which was to give their son a piece of property for a residence. He compared the uses between SAG-5 and R-2.5 and commented on the similarities and why they chose R-2.5. He also spoke about the issue of spot zoning and why they included the siblings' property in the zoning. He addressed the staff's concern of the property being the buffer between higher density residential properties. He spoke about other properties around the applicant's parcel and their zoning. None of the other applicants had plans to split their property in the near future.

Gerald Penney, applicant, recounted his history on the property and commented on the growth in the area. He commented on the nearby subdivision Plantation Pines and how it was a true development. He only wanted to do a family transfer to his son and said they didn't want to subdivide. He felt it was wonderful elk had moved into the area and said the Whitefish Fire Department built a multi million dollar fire station to accommodate the growth in the area.

**BOARD  
QUESTIONS**

Heim, Penney and Mulcahy briefly discussed why SAG-5 wouldn't work in the area due to where the house was situated.

**AGENCY  
COMMENTS**

None.

**PUBLIC  
COMMENT**

Hickey-AuClaire asked if all the board members had read the written comment received before the meeting.

They had.

Michael Newman, 1181 Hodgson Road, was against the application.

Craig Casper, 341 Plantation Drive, was against the application.

Rob Nicholson, 366 Plantation Pines, was against the application.

Dale Voigflander, 405 Tetrault Road, was against the application.

John Muhlfeld, 325 Plantation Drive, was against the application.

Felix Jimenez, 333 Plantation Drive, was against the application.

Ledjie Ballard, 318 Plantation Pines, was against the application.

Arthur Peterson, Plantation Pines, was against the application.

Dan Schrade, 615 Wishart Road, was in favor of the application.

**APPLICANT  
REBUTTAL**

Mulcahy said they did not have anything to add, but would be available for questions.

**BOARD  
QUESTIONS**

Bodman, Penney and Mulcahy discussed if Penney would be able to use the parcel originally owned by his late mother for property for his son.

**STAFF  
REBUTTAL**

None.

**BOARD  
DISCUSSION**

None.

**MAIN MOTION  
TO ADOPT  
F.O.F.  
(FZC 13-01)**

Stevens made a motion seconded by Larsen to adopt staff report FZC 13-01 as findings-of-fact.

**BOARD  
DISCUSSION**

Stevens said the application seemed straightforward and he didn't have a quarrel with the staff report.

Heim said he had approved zone changes which had come before the board, most of which were non-conforming uses and he was not against someone subdividing property to give to their children. This property didn't seem to fit with the current zoning. He wondered if it would be an easier project to sell if it was SAG-5 instead of R-2.5. He agreed that there could be 16 lots someday on the property. It shouldn't be easy to get a zone change, but it should fit the criteria.

Stevens was for the application for reasons which included similar permitted uses with R-2.5 and SAG-10, no change of use with the zone change, there was no proposed subdivision of the property with the exception of the piece for the son, it didn't change the character of the area, and he didn't want to change the application to a different zoning for example, SAG-5. He said they should go forward with their discussion concerning the zoning proposed in the application.

Heim said he didn't propose they change the classification; he wanted the discussion because it was an issue he struggled with.

Stevens said if there were any concerns with the septic and water table, the DNRC and Flathead County Health Department would not allow subdivision to continue. He also said open space was not a concern with 2.5 acre plots and spoke about the difficulties in making these decisions. His view on private property rights was if the Penneys' general welfare was increased drastically and someone else's was increased a bit, then the general welfare of the entire community was increased.

**ROLL CALL TO  
ADOPT F.O.F.  
(FZC 13-01)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION  
TO  
RECOMMEND  
APPROVAL OF  
CONDITIONS  
(FZC 13-01)**

Stevens made a motion seconded by Faulkner to adopt Staff Report FZC 13-01 and recommend approval to the Board of County Commissioners.

**BOARD  
DISCUSSION**

Larsen said it was a tough decision and recounted incidences of when he first was on the board where the decisions were contradictory concerning density in the same area.

Bodman agreed with Larsen. He said he didn't believe the applicants were going to subdivide the entire property as soon as the meeting was over, they could not get 16 lots in the 40 acres after land was taken for required infrastructure, the change in zoning allowed for a greater density than what was already in the area, and more public discussion should be held as to how the public wanted the area to be developed and not be taken on in a piecemeal fashion. He did not have an issue with this particular project. He had an issue with the implications of the application beyond the property.

Schlegel agreed with Heim. He said it was sad the zone change was the only way the applicant could split off land for family. He understood the applicant's position and thought this was a way for him to help his son out.

Heim said the applicant was not an out of state developer who snatched up 40 acres and was trying to build a subdivision. This was at least two generations of family which had owned the land. He would probably support the application. He felt growth was coming to the area. The applicant was following the rules as to what to do in this situation by asking for a zone change.

Hickey-AuClaire agreed. She said she was charged with looking at a zone change, there was a potential of build out but that was not what she was there to review. The question was if the application would affect the general health, wealth and welfare of the area. She felt this was a harder zone change than others the board had reviewed. She could not say whether the property would be subdivided or not.

**ROLL CALL TO  
RECOMMEND  
APPROVAL OF  
(FZC 13-01)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Hickey-AuClaire reviewed the process the application would follow from this point on for the audience members.

***The board took a 10 minute break.***

**OLD BUSINESS**

Grieve said public comment brought up good questions, but they could be addressed in the Planning Office before the hearing. He went on to review possibilities of how to start to review the zoning regulations for updating. Possibilities included a possible

flow chart diagram feel of general questions trickling down to more specific questions and possible remedies for issues in the regulations or specific changes to the text.

The board and Grieve discussed at length the pros and cons of the different options of updating the zoning regulations and how to how to mitigate the cons. They also discussed at length possible issues which needed to be addressed in the zoning regulations which included business zones. They decided to take a general to specific approach to the changes which were needed to update the zoning regulations.

Grieve said Mack would be the point person working with the board on the zoning regulation updates.

## **NEW BUSINESS**

Grieve reviewed his findings on the issue of the ability of a private land owner to obtain emergency permits in the floodplain. He said DNRC would hold a session for the board to ask questions about the floodplain regulations on May 8, 2013 from 5 to 6 pm.

The board and Grieve discussed people who would be interested in the open house by DNRC.

Grieve went on to update the board on other projects DNRC had in the valley concerning different floodplain areas. He also reviewed a report from the code compliance officer on closed and ongoing files and inspections for expiring permits. He passed out a handout with information from the last 20 years concerning applications and reviewed the information for the board.

The board and Grieve discussed the process FPP-12-02 Rosewater Subdivision had been through the public hearing and why it was on the meeting dockets again for May 8, 2013.

They also briefly discussed the increase of developers' interest in property in the valley.

Grieve briefly touched on broad topics for his budget review the next day.

The board and Grieve discussed property approved for subdivision which was sitting vacant and the incomes of the valley.



**ADJOURNMENT** The meeting was adjourned at approximately 9:21 pm. on a motion by Larsen. The next meeting will be held at 6:00 p.m. on May 8, 2013.

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Marie Hickey-AuClaire, Chairman

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Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 5 / 8 / 13*